

Matthew R. Clark (SBN 271054)
mclark@piteduncan.com
Casey J. O'Connell (SBN 283492)
coconnell@piteduncan.com
PITE DUNCAN, LLP
4375 Jutland Drive, Suite 200
P.O. Box 17933
San Diego, CA 92177-0933
Telephone: (858) 750-7717
Facsimile: (619) 590-1385

Attorneys for Creditor
Wells Fargo Bank, National Association as
Trustee for the Certificateholders of
Structured Asset Mortgage Investments II
Inc., GreenPoint MTA Trust 2005-AR2,
Mortgage Pass-Through Certificates, Series
2005-AR2

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

In re

BENYAM MULUGETA AND PAULA R.
MULUGETA,

Debtors.

Case No. 09-51900

Chapter 11

**STIPULATION RE: TREATMENT OF
CREDITOR'S CLAIM UNDER
DEBTORS' PROPOSED CHAPTER 11
PLAN OF REORGANIZATION**

SUBJECT PROPERTY:

1112-1114 Chaucer Street,
Berkeley, California 94702

This Stipulation is entered into by and between Wells Fargo Bank, National Association as Trustee for the Certificateholders of Structured Asset Mortgage Investments II Inc., GreenPoint MTA Trust 2005-AR2, Mortgage Pass-Through Certificates, Series 2005-AR2 ("Creditor") by and through its attorneys of record, Pite Duncan LLP, and Benyam Mulugeta and Paula R. Mulugeta ("Debtors"), by and through their attorney of record, Stanley A. Zlotoff.

The property which is the subject of this matter is commonly known as 1112-1114 Chaucer Street, Berkeley, California 94702 ("Subject Property").

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On April 1, 2005, Debtors executed an Adjustable Rate Note in the principal sum of \$562,250.00 (the "Note"), which was made payable to GreenPoint Mortgage Funding, Inc. ("Lender"). The Note reflects that it was specially indorsed to Creditor.

The Note is secured by a deed of trust (the "Deed of Trust") encumbering the Subject Property. The Deed of Trust reflects that it was duly recorded. The Note and Deed of Trust are hereinafter referred to as the "Subject Loan".

Subsequently, Lender's beneficial interest under the Deed of Trust as assigned to Creditor.

On March 18, 2009, Debtors filed a voluntary petition under Chapter 11 of the Bankruptcy Code in the Northern District of California – San Jose Division, and were assigned bankruptcy case number 09-51900.

As of February 4, 2013, the total amount required to reinstate the Subject Loan was **\$171,947.29**.

As of February 18, 2013, the total amount required to payoff the Subject Loan was **\$753,228.14**, which includes **\$38,853.92** in post-petition escrow advances.

Specifically, Creditor has made the following escrow advances for real property taxes on the Debtors' behalf:

<u>Date</u>	<u>Amount Advanced</u>	<u>Advance Description</u>
November 17, 2009	\$5,127.54	Tax Disbursement
March 15, 2010	\$5,127.54	Tax Disbursement
November 17, 2010	\$5,087.16	Tax Disbursement
March 15, 2011	\$5,087.16	Tax Disbursement
November 16, 2011	\$6,185.14	Tax Disbursement
March 8, 2012	\$6,185.14	Tax Disbursement
November 13, 2012	\$6,054.24	Tax Disbursement
Total Post-Petition Tax Advances as of February 20, 2013: \$38,853.92		

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1 **THE PARTIES STIPULATE TO THE FOLLOWING TREATMENT OF CREDITOR'S**
2 **SECURED CLAIM UNDER DEBTORS' CHAPTER 11 PLAN OF REORGANIZATION:**

3 **Secured Claim**

4 1. Creditor shall have a fully secured claim in the amount of **\$714,374.22** to be
5 amortized over (30) years at 5.50% interest per annum (the "Secured Claim");

6 2. Debtors shall tender regular monthly principal interest payments in the sum of
7 **\$4,056.14** to Creditor for the Secured Claim commencing **March 1, 2013**, and continuing until
8 all such outstanding amount under the Secured Claim are paid in full;

9 **Administrative Claim**

10 3. Creditor shall have an administrative claim for post-petition escrow advances it
11 disbursed on the Debtors' behalf in the amount of \$38,853.92 (the "Administrative Claim");

12 4. The Administrative Claim shall be cured in (60) equal monthly payments in the
13 amount of **\$647.57** commencing **March 1, 2013**, and continuing until all such outstanding
14 amount under the Administrative Claim are paid in full;

15 **Escrow**

16 5. In addition, Debtors shall tender escrow payments to Creditor for any future real
17 property taxes and real property hazard advances made by Creditor. This amount is subject to
18 change pursuant to the terms of the Note and Deed of Trust;

19 6. Except as otherwise expressly provided herein, all remaining terms of the Note
20 and Deed of Trust shall govern the treatment of Creditor's claims.

21 **Pre-Confirmation Default**

22 7. In the event of a pre-confirmation default under this Stipulation, Creditor shall
23 provide written notice to Debtors at 1025 Harker Avenue, Palo Alto, CA 94301 and to Debtors'
24 attorney of record, Stanley A. Zlotoff, 300 South First Street, Suite 215, San Jose, California,
25 95113 indicating the nature of the default. If Debtors fail to cure the default with certified funds
26 after the passage of thirty (30) calendar days from the date said written notice is placed in the
27 mail, the automatic stay shall terminate in its entirety and Creditor may proceed to foreclose its
28 security interest in the Subject Property under the terms of the Note and Deed of Trust and

1 pursuant to applicable state law and thereafter commence or continue any action necessary to
2 obtain complete possession of the Subject Property without further notice, order, or proceeding
3 of this Court;

4 8. The acceptance by Creditor of a late or partial payment shall not act as a waiver of
5 Creditor's rights to proceed hereunder;

6 9. In the event that Creditor is granted relief from the automatic stay, the parties
7 hereby stipulate that the 14-day stay provided by Bankruptcy Rule 4001(a)(3) is waived;

8 10. In the event the Debtor default under this Stipulation and Creditor forward a 30-
9 day letter to Debtors and Debtors' attorney, Debtors shall be required to pay reasonable costs and
10 fees incurred for each default letter submitted in order to cure the default;

11 **Post-Confirmation Default**

12 11. The automatic stay of 11 U.S.C. §362 shall terminate on the date of the entry of
13 the order of confirmation;

14 12. However, Creditor shall not take any action to enforce either the pre-confirmation
15 obligation or the obligation due under the Stipulation/Plan, so long as Debtors are not in default
16 under the Stipulation/Plan;

17 13. If the Debtors fail to make any payment, or to perform any other obligation
18 required under this Stipulation/Plan, for more than (10) days after the time specified above for
19 such payment or other performance, Creditor may serve upon Debtors a written notice of
20 Debtors' default. If Debtors fail within (30) days after the date of service of notice of default to
21 cure the default, then the Debtors are in material default under the Plan ("Material Default");

22 14. In the event the Debtors are in Material Default and Creditor forwards a 30-day
23 letter to Debtors, Debtors shall be required to pay reasonable costs and fees incurred for each
24 default letter submitted in order to cure the Material Default;

25 15. In the event of a Material Default, Creditor: (i) may file and serve a motion to
26 dismiss the case or to convert the case to Chapter 7; and/or (ii) without further order of the court
27 has relief from stay to the extent necessary, and may pursue its lawful remedies against the
28 Subject Property including conducting a non-judicial foreclosure sale;

1 16. The acceptance by Creditor of a late or partial payment shall not act as a waiver of
2 Creditor's right to proceed hereunder;

3 **Miscellaneous Provisions**

4 17. In the event the Debtors' case is converted to any other chapter under Title 11 of
5 the United States Bankruptcy Code, Creditor shall retain its lien in the full amount due under the
6 Note and if the Debtors are in default under the terms of the Note, the automatic stay shall
7 terminate in its entirety so that Creditor may proceed with foreclosure actions against the Subject
8 Property;

9 18. In the event the Debtors' case is dismissed, Creditor shall retain its lien in the full
10 amount due under the Note and if the Debtor is in default under the terms of the Note, Creditor
11 may proceed with foreclosure actions against the Subject Property;

12 19. At the request of Creditor, the Debtors shall execute such documents and
13 instruments as are necessary to reflect the Debtors as the borrowers of the Secured Claim, and to
14 modify the terms of the obligation to conform to the provisions with this Stipulation;

15 20. In the event the Debtors seek to sell the Subject Property prior to receiving their
16 Chapter 11 Discharge, Creditor shall retain all rights afforded to it under applicable state and
17 federal law including 11 U.S.C. §§363(f) & (k);

18 21. The Debtors shall file an Amended Chapter 11 Plan incorporating the terms of
19 this Stipulation. The terms of this Stipulation may not be modified, altered, or changed without
20 the express written consent of Creditor. Any inconsistency between the Amended Plan and this
21 Stipulation shall be resolved in favor of this Stipulation;

22 22. In exchange for the foregoing, this Stipulation shall constitute a ballot voting in
23 favor of the Debtor's proposed Chapter 11 Plan of Reorganization for the Secured Claim;

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